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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,774	12/16/2003	Michael Allen Taylor	4006-0112P	4050
2292	7590	05/16/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER

3751

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,774

Applicant(s)

TAYLOR, MICHAEL ALLEN

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/16/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-18, drawn to a pool cover, classified in class 4, subclass 498.

II. Claims 19 and 20, drawn to a method for making a pool cover, classified in class 520, subclass 1.

The inventions are distinct, each from the other because:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP §.806.05(f)). In the instant case the product can be made by a process not requiring material to be provided and mixed.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification which would lead to divergent fields of search, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with Robert Gnuse on April 28, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-18. Affirmation of

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this election must be made by applicant in replying to this Office action. Claims 19 and 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. The disclosure is objected to because of the following informalities: Paragraph 0027, line 8, reference numeral "211" is missing.

Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "means for absorbing light" set forth in claim 13 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an

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application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 8-11 and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Peled et al.

The Peled et al. (Peled) reference discloses a cover comprising: a plastic film (abstract) including a material (col. 2 lns. 5-9 and 28-31), as claimed. The initial statement of intended use (pool), and all other functional implications related thereto, have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by Peled.

7. Claims 6, 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peled and Toye.

Although the material of the Peled cover does not include a layer, as claimed, attention is directed to the Toye reference

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which discloses an analogous cover which further includes a material (col. 4 lns. 45-65) being a layer (col. 9 lns. 4-6). Therefore, in consideration of Toye, it would have been obvious to one of ordinary skill in the cover art to associate a layer with the Peled cover in order to utilize a well known film manufacturing process.

8. Claims 1-5, 7-11 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett and Zell et al.

The Bartlett reference discloses a pool cover comprising: a plastic film 5,8 including a material 15 and air pockets 10. Therefore, Bartlett teaches all claimed elements except for the material being specified for algae growth prevention.

Although the material of the Bartlett pool cover is not specified for algae growth prevention, as claimed, attention is directed to the Zell et al. (Zell) reference which discloses an analogous pool cover which further includes a material (col. 4 lns. 53-55) specified for algae growth prevention (col. 2 lns. 60-63). Therefore, in consideration of Zell, it would have been obvious to one of ordinary skill in the pool cover art to associate algae growth prevention material with the Bartlett pool cover (if not already) for the self evident purpose of preventing algae growth.

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9. Claims 1-5, 7-11 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett, Zell and Peled.

Although the material of the Bartlett cover is not specified as orange, as claimed, attention is directed to the Peled reference which discloses an analogous cover which further includes a material (col. 2 lns. 5-9) specified as orange (col. 2 lns. 28-31). Therefore, in consideration of Peled, it would have been obvious to one of ordinary skill in the plant treatment art to associate orange material with the Bartlett cover in order to absorb a particular wavelength of radiation.

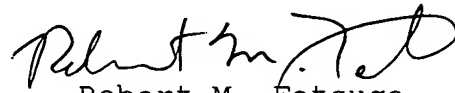
10. Claims 6, 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett, Zell and Peled as applied to claims 1-5, 7-11 and 13-17 above, and further in view of Toye.

To provide the material as a layer would have been obvious to one of ordinary skill in the art in consideration of Toye analogous to the discussion supra.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

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12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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